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# Review of the Workplace Gender Equality Act 2012

Submission to the Department  
of Prime Minister and Cabinet

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Australian  
Chamber of Commerce  
and Industry

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## A. SUMMARY

- 1 The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide a submission in response to the review of the Workplace Gender Equality Act 2012.
- 2 ACCI supports workplace gender equality and acknowledges the need to implement measures to encourage the greater participation and equal treatment of genders in the workforce.
- 3 Whilst ACCI supports endeavours to improve gender equality and encourages measures which aim to achieve the objectives set out in the Workplace Gender Equality Act 2012 (WGEA Act), ACCI is concerned about any attempts as a result of this review process to increase the regulatory burden on business.
- 4 It is employers alone who have to implement any changes that are made to reporting and compliance matters, not unions or special interest groups. Therefore, we believe that the views of ACCI and other employer representatives in this review should be given substantial weight, particularly when it comes to considerations and proposed changes that will lead to increased red tape and non-compliance actions.
- 5 In considering the questions set down by this review it is vitally important that Workplace Gender Equality Agency (WGEA) consider the utility of existing and proposed measures to achieve the WGEA Acts objectives against the negative ramifications that will flow from an increase to the regulatory burden, particularly on small and medium business.
- 6 Whilst politicians and economists often lament the declining productivity in our economy, the impost of lengthy and time intensive government agency reporting obligations are exactly the type of red-tape that effectively acts as a tax on the efforts of enterprise, for very little if any real gain.
- 7 If we are serious about tackling gender equality and productivity then the Government must seriously consider the impost and cost that is currently being placed on many businesses who are required to fill out paperwork and box tick in order to meet regulatory requirement contained in the WGEA Act which do not go far enough to genuinely impacting on gender equality outcomes. Particularly in circumstances where there are viable and reasonable alternative solutions which would be far more successful in incentivising business rather than punish and diverting their attention away from genuine efforts to implement measures to promote workplace equality.
- 8 As a result, ACCI asks that further consideration of any additional reporting requirement coming out of this WGEA Act review actively involve industry in the development of any new or expanded reporting obligations, particularly in so far as they touch upon or impact on small, medium and family businesses currently outside of the WGEA Acts current remit.
- 9 Finally, ACCI is keen to continue to participate in the consultation processes relating to the development and implementation of any proposed changes stemming from this review and thanks the Government and WGEA for the opportunity to make this submission.

## **B. FUNCTIONS AND POWERS OF THE WORKPLACE GENDER EQUITY AGENCY**

- 10 The Review asks whether the functions and powers of WGEA are appropriate for promoting and improving gender equality in the workplace. As well as how effective WGEA has been to date in achieving its functions to promote and achieve gender equality in the workplace.
- 11 Whilst ACCI commends the work and efforts of WGEA in seeking to improve workplace practices and outcomes targeted towards greater gender equality, ACCI believes that WGEA's role and functions should place a far greater emphasis on education, advice and promotion of the benefits of gender equality in the workplace than is current being undertaken.
- 12 ACCI is also somewhat concerned the activities of WGEA and its engagement with business have become so heavily reliant on reporting requirement and outcomes such as naming and shaming and awards, that this has resulted in averting employer attention away from internal workplace efforts aimed at achieving greater gender equality in the workplace, to efforts to simply ensure compliance with procedural requirements and form filling. This issue is further touched up and addressed in section B below.
- 13 WGEA should play a greater role in working with industry association to provide practical, easy to understand policy and technical advice to employers and businesses that are bound by the reporting requirements in the WGEA Act. In addition provisions should be made to allow employers who is concerned that they will not meet the minimum standards set out in the WGEA Act or the reporting requirements to work in conjunction with industry association who can provide tailored advice and education to that employer. Targeted education would also be consistent with one of the existing objectives of the Bill, namely to promote, among employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities).
- 14 Finally at present, WGEA lacks comprehensive and effective education measures which actively seek to inform and educate employers on the importance of gender equality and how great female participation in the workforce typically leads to better financial outcomes for business. ACCI believes this should be urgently addressed and made a key objective and function of the agency.

## **C. RELIANCE ON REPORTING & DATA COLLECTION**

- 15 One of the many unfortunately unintended consequences of the WGEA Act is that in seeking to achieve greater gender equality, actions taken to meet compliance requirements have in many instances become a box ticking exercise, divorced from the goal of more equitable Australian workplaces.
- 16 As a result, for many the process of collating and reporting on gender equality data is no longer seen as an opportunity to gain insight and improve the working environment for all, but has shifted focus to presenting ones business in a certain light in order to either avoid the punishment that comes from non-compliance including public shaming or secure recognition as an "employer of choice for gender equality". The temptation to think more about what can be demonstrated than about what needs to be done is simply too great. In doing so the focus is therefore too often on ensuring an external perception that 'all is well and improving inside' rather than on genuinely



looking behind the veil of the reporting framework to the day to day reality and experiences of both genders in the workforce and the culture and stories that sit behind the statistics.

- 17 ACCI believes that in order for the WGEA to better contribute to achieving greater gender-equality outcomes its focus should at its heart be about collaboration and working together with businesses to weaken entrenched inequalities in the system and structures currently in place in workplaces. It shouldn't, as is currently the case, be about big sticks to punish businesses who fail to comply with reporting requirements or big stars for those who are able correctly fill out forms and are awarded trophies in the form of 'employers of choice' for their good behaviour.
- 18 In addition, ACCI suggests the Government through this review process look to create ways for business to report mistakes and disappointments in seeking to do better on gender equality, without the reporting of such outcomes jeopardizing a business's reputation through public naming and shaming or the removal of awards.
- 19 Working to improve gender equality outcomes is not without its challenges and unintended consequences, everything from unfair burdens to less willingness to talk about the most difficult problems, to stronger feelings of hypocrisy and cynicism. The WGEA Act and its reporting and compliance obligations should be amended to make it possible for businesses to share these very human challenges through giving credence to those who seek to share such experiences and reducing the incentives currently in place to put misleading positive spins on data and actions taken to hide them.
- 20 There are helpful precedents for helping businesses, organisations and people air their 'dirty laundry' that are easy and cost neutral to implement, like the anonymisation of reports or allowing certain data and experiences to be shared under strict Chatham House rules.
- 21 Business at its heart wants to play its vital role in seeing better equality and diversity outcomes but in order to do so, the WGEA Act should be amended to make it safe for business to honestly and frankly learn from their mistakes and help others achieve the same goal.

## **D. EXPANDING THE DEFINITION OF 'RELEVANT EMPLOYER'**

- 22 Federal gender quality laws and objectives should be balanced and proportionate to the size and capacities of business. Businesses are not homogenous, and measures to improve gender equality outcomes need to take this into account. In particular, the circumstances of small and medium-sized businesses without recourse to in-house or external lawyers needs to be taken into account in framing and implementing the law, and what our laws ask of particular businesses.
- 23 Differential treatment for smaller businesses already exists in many other areas of federal regulation, including the Fair Work Act 2009 (Cth) and the Privacy Act 1988 (Cth), and in a number of state schemes.
- 24 ACCI is committed to ensuring the needs and interests of small to medium sized business are taken into account by Government. For this reason ACCI strongly rejects any proposals or suggestion that may be made as a part of this review which seek to expand the definition of 'relevant employer' to those employing less than 100 employees.

- 25 As it currently stands not all employers that have 100 employees or more can be assumed to be equal in their financial and operational capacities let alone those with lower numbers of employees. Far from all have sophisticated HR departments or Equal Opportunity specialists.
- 26 'A one size fits all approach through any attempts to expand the definition of 'relevant employer' to those with less than 100 employees, would be completely unreasonable. It would burden small and medium businesses with expensive and time consuming administrative and reporting processes that would confuse, frustrate and stifle genuine efforts being made by these businesses to grow and employ Australian women and men.

## **E. DATA COLLECTION AND THE REGULATORY BURDEN ON EMPLOYERS**

- 27 The current Australian Government has committed to simplifying its interactions with business to support growth, innovation and employment.
- 28 If it is to achieve this objective then much more needs to be done to minimising the regulatory burden on employers by tackling the unnecessary duplication and volume of reporting requirements currently placed on business by virtue of the reporting and compliance obligations contained in the WGEA Act.
- 29 Many businesses currently find it confusing to deal with multiple agencies. They see government as a single entity and do not understand why they need to provide the same information more than once.
- 30 The current reporting process should be made simpler, shorter and less time consuming so that business does not have to spend days trying to locate, record and calculate information, as well as being required to get it into a form that meets the reporting requirements as set out in the WGEA Act and accompanying regulations.
- 31 To achieve this, ACCI strongly supports other data sources such as Single Touch Payroll data being share and utilised by WGEA, as a part of its data collection processes, so as to reduce the cost and burden of reporting the same data set twice to two different government agencies which is currently placed on business.

## **F. MINIMUM STANDARDS**

- 32 The current minimum standards are an example of a box ticking exercise and burden place on business that does not provide any legitimate or tangible evidence of anything more than a document being written and produced in compliance with one or more of the indicators in the Minimum Standards Legislative Instrument. To this end ACCI disagrees with the contention suggested in the phrasing of the question in the review paper regarding minimum standard which suggests that they have driven practical equality outcomes in the workplace.
- 33 As is also pointed out in the discussion paper, these standards are already largely met by large businesses and it is ACCI contention that such high levels of compliance amongst employers is merely a reflection of the well resources nature of large employers who typically have legal and HR

departments that are tasked with ensuring that minimum standards are met, rather than evidence of any gender equality outcomes being achieved beyond a written policy document.

- 34 ACCI therefore does not believe there is any utility or gender equity improvements that would be achieved by extended the existing minimum standards beyond the existing 500 or more employee threshold.
- 35 Due to the potential for non-compliance under the framework, if the threshold was amended many employers impacted would be likely to give more focus to the procedural nature of the requirement in the minimum standards, as appears to have also been the case for large businesses rather than the merits of their own internal efforts to improve gender equality.
- 36 Further, extending the minimum standard obligations onto small and medium business, with less than 100 employees, would also risk many smaller employers who often have informal and unwritten policies or strategies applying to their workforces being burden with unnecessary legal costs and expenses in order to formalise specific policies in order to tick the minimum standards requirements. ACCI strongly contends that this would not be a preferable outcome, as it would be highly unlikely to translate into any actual gender equality improvements but would expose many vulnerable small and family businesses to unnecessary and costly legal expenses.

## **G. CURRENT COMPLIANCE MECHANISMS AND CONSEQUENCES FOR NON-COMPLIANCE**

- 37 The current compliance approach set out in the Workplace Gender Equality Act which aims to increase female workforce participation and equality largely serves to simply divert resources away from genuine reform and genuine activities aimed at achieving the Acts objectives due to an over reliance on reporting and compliance action.
- 38 There is a lack of evidence that exists to demonstrate a causal link between existing employer reporting obligations and improved outcomes for women in the workplace and the promotion of gender equality. Existing compliance mechanisms merely serve to reward those with the greatest capacity and will to fill out paper work, box tick and draft policies rather than serving to look behind the veil of data, paperwork and policies to actually properly understand and address the real drivers of gender inequality in some workplaces.
- 39 Given this it is unclear to ACCI why Government would look to propose to increase employer reporting obligations and introduce further compliance requirements.
- 40 In addition ACCI suggests that consequences for non-compliance should be amended in order to ensure that they are directly proportionate to the severity of the non-compliance. It currently defies logic that any breach of the WGEA Act whether minor or not results in an employer being publicly named and shamed. Such uniform consequences have resulted in a hardening of stance towards the agency by those who have failed to comply in many cases due to resourcing demands.



## H. ALTERNATIVE MEANS TO IMPROVING GENDER EQUALITY OUTCOMES

- 41 ACCI supports workable and sensible policy measures being implemented through WGEA which have the capacity to make a real improvement to enhancing gender equality. Such measures do not necessarily have to involve additional or new legal obligations.
- 42 ACCI suggest the government look to WGEA to achieve its objectives through a number of alternative non-legislative means which focus on outcomes rather than processes such as:
- a. Targeted education campaigns similar to those run by the Fair Work Ombudsman and Safe Work Australia to genuinely assist employers in encouraging the utilisation of existing measures that promote female workforce participation such as flexible working arrangements and paid parental leave.
  - b. Industry specific policies and training programs targeted at attracting employees into industry sectors traditionally dominated by a single gender such as those already being undertaken and run by a number of key ACCI members, including Master Builders Australia in the building and construction industry and the Australia Mining and Metals Association in the mining and resources sector.
  - c. Removing the burden on employers to administer paid parental leave payments, instead engaging resources to educate employer on promoting the paid parental scheme to their employees both male and female.
  - d. The development of voluntary codes and guidelines with industry which aim to address gender inequality in particular industries and sectors.
  - e. Reframing the gender equality discussion in terms of pursuing genuine 'equality of opportunity' instead of just focusing on gender pay gap statistics and equality of outcomes. Equality of choice is a more constructive measure, it better recognises the reality for many of either balancing work and family commitments or the equally valid choice of solely focusing on the role of work-at-home parenting.

## I. ABOUT THE AUSTRALIAN CHAMBER

The Australian Chamber of Commerce and Industry is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, employing over 4 million Australian workers.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

# OUR MEMBERS

## CHAMBER



## INDUSTRY ASSOCIATION

